

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSEPH WASHINGTON,

Case No. 2:24-cv-00703-GMN-MDC

Petitioner,

v.

ORDER

BEAN, et al.,

Respondents.

This habeas matter is before the Court on *pro se* Petitioner Joseph Washington's failure to comply with the Court's prior Order (ECF No. 13).

In April 2024, Washington submitted a Petition for Writ of Habeas Corpus (ECF No. 1-1). On August 14, 2024, the Court instructed Washington to show cause in writing why this action should not be dismissed with prejudice as time-barred and based on his failure to exhaust his claims in Nevada state courts. ECF No. 13. The Court instructed Washington to file a "Response to Order to Show Cause" in writing within 30 days and warned that his failure to timely and fully comply with the order would result in a dismissal of this action without prejudice and without further advance notice. *Id.* at 5-6. However, Washington did not comply with the order by filing a response to the order to show cause, and the 30-day deadline expired.

To date, Washington has not filed a response to the order to show cause or taken any action to prosecute this case.

I. Discussion

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal*

1 *Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In
2 determining whether to dismiss an action on one of these grounds, the Court must consider: (1)
3 the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its
4 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
5 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
6 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v.*
7 *U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

8 The first two factors, the public’s interest in expeditiously resolving this litigation and the
9 Court’s interest in managing its docket, weigh in favor of dismissal. The third factor, risk of
10 prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises
11 from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting
12 an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the
13 public policy favoring disposition of cases on their merits—is greatly outweighed by the factors
14 favoring dismissal.

15 The fifth factor requires the Court to consider whether less drastic alternatives can be used
16 to correct the party’s failure that brought about the court’s need to consider dismissal. *See Yourish*
17 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
18 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
19 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
20 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
21 prior to disobedience of the court’s order as satisfying this element[,]” *i.e.*, like the “initial granting
22 of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been
23 “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before finally
24 dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*,
25 779 F.2d 1421, 1424 (9th Cir. 1986). Because litigation cannot progress without Washington’s
26 compliance with court orders, the only alternative is to enter a second order setting another
27 deadline. But the reality of repeating an ignored order is that it often only delays the inevitable
28 and squanders the court’s finite resources. The circumstances here do not indicate that this case

1 will be an exception. Setting another deadline is not a meaningful alternative given these
2 circumstances. So the fifth factor favors dismissal.

3 **II. Conclusion**

4 It is therefore ordered that Petitioner Joseph Washington's Petition for Writ of Habeas
5 Corpus (ECF No. 1-1) is dismissed without prejudice based on his failure to comply with the
6 Court's Order.

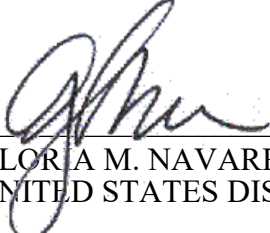
7 It is further ordered that Washington's Motion to File Amended 28 U.S.C. 2254 (ECF
8 No. 6) and Motion to Amend Petition (ECF No. 12) are denied as moot.

9 It is further ordered that a certificate of appealability is denied as jurists of reason would
10 not find the Court's dismissal of the petition to be debatable or wrong.

11 It is further ordered that under to Rule 4 of the Rules Governing Section 2254 Cases, the
12 Clerk of Court is directed to add Nevada Attorney General Aaron D. Ford as counsel for
13 respondents and informally serve the Nevada Attorney General by directing a notice of
14 electronic filing of this Order to his office. No response is required from respondents other than
15 to respond to any orders of a reviewing court.

16 It is further ordered that the Clerk of the Court is instructed to enter final judgment
17 accordingly and close this case.

18 DATED: October 21, 2024

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21 GLORIA M. NAVARRO
22 UNITED STATES DISTRICT JUDGE
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